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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2076 of 1999

Petitioner		Krishna Kumar Yadav, S/o Bhanwar Singh Yadav, aged about 32 years, resident of Faguram, tahsil Sakti District Janjgir Champa (MP)
	Versus	
Respondents	1.	The Collector Raigarh.
	2.	District Employment Officer, Raigarh.
	3.	Manager, S.E.C.L. Raigarh.
	4.	Naib Tahsildar, Kharsiya, District Raigarh.

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Awadh Tripathi, Advocate for the Petitioner.

Shri Pankaj Shrivastava, Panel lawyer for the Respondents No. 1, 2 and 4.

Shri Vinay Pandey, Advocate for the Respondent No. 3.

ORAL ORDER

(10th January, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioner was holding a piece of land admeasuring 0.40 acre bearing Khasra No. 39/2 at Village-Domnara, Tahsil-Kharsia, District-Raigarh. The said land was acquired by respondent No. 1 for respondent No. 3 under the Provisions of Section 9 (1) of the Coal Bearing Areas (Acquisition and Development) Act 1957 (for short 'the Act 1957'). The petitioner was paid compensation against the said acquisition of land in the month of April 1995. The petitioner was paid compensation in December, 1995. The rehabilitation policy provides for grant of employment also to the land holders or one of his/her dependants, in addition to the compensation payable for the

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acquisition of the land. The petitioner was accordingly granted appointment by order dated 8.04.1996 (Annexure P/1). The appointment was inter alia subject to following conditions:- "Your service shall be liable to be terminated at any time if it is found that employment has been obtained by giving any false/wrong information regarding relationship with the land owner, Educational qualification, Ownership of the land, Age etc. or any material fact has been concealed either by you or the land oustees/owner."

2. At the time of appointment the petitioner has given address of his original Village Domnara, Post-Jarkanara, Tahsil-Kharsiya, District-Raigarh. On a complaint, the Naib Tahsildar made an enquiry and by order dated 9.02.1999 (Annexure P/6), held that the petitioner was not found residing in Village Domnara, the petitioner was residing in Village Faguram, Tahsil Dabhra, District Champa Janjgir. Learned counsel for the petitioner submits that village – Faguram is 15 kms. away from the place where the petitioner was holding the land prior to December 1995. When his entire holding of land was acquired by the respondent No. 3, the petitioner started living in village Faguram.

3. With regard to the authenticity of the domicile certificate the respondent No. 3 initiated an enquiry after giving proper notice dated 22.3.1999 (Annexure P/7) to the petitioner. In the enquiry report, the Enquiry Officer has recorded the statement of the petitioner, as under:

" मुझ पर प्रबंधन के द्वारा जो आरोप लगाया गया है वह बिलकुल ही निराधार है, मैं सन 1992 से सन 1996 तक ग्राम डोमनारा में श्री चमार सिंह निषाद व श्री आशा राम निषाद उम्र 60 वर्ष के घर पर रहता था । जिसकी पुष्टी के लिये मैं चमार सिंह निषाद द्वारा नोटरी के समक्ष दिया गया शपथ पत्र की प्रतिलिपि प्रेषित कर रहा हूँ Exhibit No.3. । इसके अलावा मैं ग्राम पंचायत देहजरी के सरपंच के द्वारा दिये गये प्रमाण पत्र की

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प्रतिलिपि भी प्रस्तुत कर रहा हूँ जिसे Exhibit No. 4 रिकार्ड किया गया, जिसमें 1992 से 1996 तक ग्राम डोमनारा में मेरे रहने की पुष्टि हैं इसके अलावा मेरे पास ग्राम डोमनारा में रहने की पुष्टि के लिये Election Commission of India द्वारा जारी किया गया परिचय पत्र भी है जिसकी प्रतिलिपि मैं प्रेषित कर रहा हूँ जिसे Exhibit No. 5 रिकार्ड किया गया इसके अतिरिक्त SECL रायगढ क्षेत्र द्वारा भेजे गये नियुक्ति पत्र, जो कि मेरे द्वारा दिये गये पते ग्राम डोमनारा भेजा गया था जिसे मैंने ही प्राप्त किया की कॉपी भी प्रेषित कर रहा हूँ जिसे Exhibit No. 6 रिकार्ड किया गया । सन् 1996 के बाद जब मेरी जमीन एसईसीएल द्वारा से ली गयी थी और उसके बदले में मूझे नौकरी दी गयी थी तब मैंने ग्राम डोमनारा छोडा और अपने मूल निवास स्थान फगुरम ग्राम में जाकर रहने लगा और वहीं से अपने कार्य स्थल पर आना जाना करता था, जिसके वजह से मुझे ग्राम डोमनारा छोडना पडा मेरा निवास प्रमाण पत्र जो कि ग्राम डोमनारा के नाम से था वह बिलकुल सही है सन् 1999 में जब प्रशासन द्वारा तहकीकात की गयी तब मेरी जमीन एसईसीएल द्वारा ले लिया गया था और मैं अपने मूल निवास फगुरम से अपने कार्य स्थल पर आना जाना कर रहा हूँ जिसकी वजह से मैं डोमनारा में नहीं रह रहा हूँ इसलिये मेरे निवास प्रमाण पत्र को जो कि 1992–93 में बनाया गया को निरस्त करना निराधार है । मैंने अपना निवास प्रमाण पत्र उस वक्त बनवाया था जब मैं ग्राम डोमनारा में निवास कर रहा था ।"

4. The appointment order dated 8.04.1996 (Annexure P-1) was cancelled by the respondent/SECL by order dated 17.04.1999 (Annexure P-8). The petitioner has filed this petition praying that the order issued by Naib Tahsildar dated 9.02.1999 (Annexure P-6) be quashed and the order dated 17.04.1999 (Annexure P-8) passed by the General Manager, SECL Raigarh Area be also quashed.

5. Mr. Awadh Tripathi, learned Counsel for the petitioner submits that the appointment order was terminable subject to the fact that the employment was obtained by giving false/wrong information regarding educational qualification, ownership or any material facts

had been concealed either by the dependant or the land oustees/owner. The domicile certificate was not one of the conditions for quashing the appointment. Secondly, the domicile certificate was issued in Revenue Case No. 377/B 121/92-93. The order dated 9.02.1999, cancelling the earlier domicile certificate was passed without any basis, as the enquiry with regard to his residence at Domnara was conducted after 1996 when the petitioner had already shifted to new Village i.e. Faguram, after his entire holding of land was acquired by the respondent No. 3.

6. Learned counsel for the petitioner further submits that even otherwise a person who is not residing in the village may hold a land and on the basis of holding a land appointment was to be given, not on the basis of the residence of the land holder. Admittedly the petitioner was holding the land in village Domnara, which has been acquired by the respondent No. 3 and the petitioner was paid compensation accordingly.

7. Shri Vinay Pandey, learned counsel for the Respondent No. 3, per contra submits that it is true that the residence is not a condition for giving appointment but the condition is of the holding of the land and admittedly the petitioner was holding the land in question in village-Domnara and the said land was acquired by the SECL/Respondent No.3. The order of appointment was cancelled on the ground that the petitioner had not submitted the relevant facts i.e. domicile certificate correctly and he had submitted false domicile certificate. The term of the appointment makes it clear that the service is liable to be terminated if it was found that the employment has been obtained by giving false/wrong information and the petitioner had given wrong domicile certificate while obtaining the appointment order on 8.04.1996. According to learned counsel for the respondent No. 3 it

was sufficient to cancel the appointment of the petitioner, which was done after holding proper enquiry. In the present case proper enquiry was held and it was found that the petitioner was not resident of village Domnara, at the time when the appointment order was passed.

8. Shri Pankaj Shrivastava, learned counsel appearing for the respondents No. 1, 2 & 4 submits that the impugned order dated 9.02.1999, is actually not under consideration, as the SECL has held its own enquiry on the basis of the domicile certificate. Thus, it is not necessary to consider and quash the order dated 9.02.1999.

9. I have heard learned counsel for the parties and perused the documents appended to the writ petition, affidavits & return filed by the respondents.

10. I am of the view, that the appointment of the petitioner is not dependent on his residence in the village where he was holding the land, which has been acquired by the SECL under the provisions of the Act 1957. It is not disputed by the parties that the land in dispute was situated in village Domnara under the ownership of the petitioner and the petitioner had been paid compensation accordingly. Grant of employment is one of the conditions of the policy for acquisition of land for the purpose of mining under the provisions of the Act1957, in addition to the compensation in lieu of acquisition of the land. The petitioner has clarified in the enquiry which has been recorded in the enquiry report that under the circumstances when his entire land holding was acquired by the SECL the petitioner had moved to other village i.e. Faguram, Tahsil Sakti, District Janjgir Champa, which is 15 k.m. away from the original village i.e. Domnara. The petitioner's address given at the time of acquisition of land was correct and the petitioner had not concealed any material facts for obtaining the appointment order dated 8.04.1996. The contention of learned

counsel for the respondent No. 3 is not sustainable, in view of the fact that domicile was not the criteria and it was not a relevant fact for grant of employment in lieu of acquisition of land. Admittedly, the criteria was holding of the land and not residence of the land holder. Since SECL Raigarh Area has conducted its enquiry on its own. It is not necessary to go into the legality and validity of the order dated 9.02.1999.

11. In the present case the appointment order dated 8.04.1996 was rightly passed and there was no concealment of any material and relevant fact. Subsequently, passing of the impugned order dated 17.04.1999 (Annexure P/8), by respondent No. 3 was unjust and improper. The same deserves to be quashed and set aside.

12. For the reasons stated above, the petition is allowed. No order as to costs.

Certified copy, as per Rules.

Sd/-
Satish K. Agnihotri
Judge